

Register; must bear in all capital letters the title "COMMENTS," "PROTESTS," or "MOTION TO INTERVENE," as applicable, and "Project No. 2114-040." Send the filings (original and 14 copies) to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426. A copy of any filing must also be served upon each representative of the license specified in its application.

Lois D. Cashell,

Secretary.

[FR Doc. 95-30866 Filed 12-19-95; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 11072, NY]

Trenton Falls Hydroelectric Company; Notice Not Ready for Environmental Analysis, Notice Requesting Interventions and Protests, and Notice of Scoping Pursuant to the National Environmental Policy Act of 1969

December 14, 1995.

On December 5, 1995, the Federal Energy Regulatory Commission (Commission) issued a letter accepting the Trenton Falls Hydroelectric Company's application for the Boyd Dam Hydroelectric Project, located on the East Branch of Fish Creek in Lewis County, New York.

The Boyd Dam's principal features would consist of a 210-acre impoundment, an existing concrete gravity and earthfill dam with a 150-foot-long spillway section, a modified concrete intake structure, which would contain a single 795-kilowatt (Kw) generator, an upgraded 3.5-mile-long transmission line, and appurtenant facilities. With a total authorized installed capacity of 795 Kw, the project would have an average annual generation of about 6.9 megawatthours.

The application is not ready for environmental analysis at this time. A public notice will be issued in the future indicating its readiness for environmental analysis and soliciting comments, recommendations, terms and conditions, or prescriptions on the application and the applicant's reply comments.

The purpose of this notice is to: (1) invite interventions and protests; (2) advise all parties as to the proposed scope of the staff's environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (3) advise all parties of their opportunity for comment.

Interventions and Protests

All filings must: (1) bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," OR "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 C.F.R. 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

All filings for any protest or motion to intervene must be received 60 days from the issuance date of this notice.

Scoping Process

The Commission's scoping objectives are to:

- ◆ identify significant environmental issues;
- ◆ determine the depth of analysis appropriate to each issue;
- ◆ identify the resource issues not requiring detailed analysis; and
- ◆ identify reasonable project alternatives.

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be covered in the environmental document pursuant to the National Environmental Policy Act of 1969. The document entitled "Scoping Document I" (SDI) will be circulated shortly to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, non-governmental organizations (NGOs), and other interested parties to effectively participate in and contribute to the scoping process. SDI provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of a cumulative effects analysis, and a list of preliminary issues identified by staff.

The Commission will decide, based on the application, and agency and

public comments to scoping, whether licensing the Boyd Dam Hydroelectric Project constitutes a major federal action significantly impacting the quality of the human environment. The Commission staff will not hold scoping meetings unless the Commission decides to prepare an environmental impact statement, or the response to SDI warrants holding such meetings.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to comment on SDI and assist the staff in defining and clarifying the issues to be addressed.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h). In addition, commentors may submit a copy of their comments on a 3 1/2-inch diskette formatted for MS-DOS based computers. In light of our ability to translate MS-DOS based materials, the text need only be submitted in the format and version that it was generated (i.e., MS Word, WordPerfect 5.1/5.2, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format then write the files on a diskette formatted for MS-DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should show the following captions on the first page: Boyd Dam Hydroelectric Project, FERC No. 11072.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or interceders (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See CFR 4.34(b).

The Commission staff will consider all written comments and may issue a Scoping Document II (SDII). SDII will include a revised list of issues, based on the scoping process.

For further information regarding the scoping process, please contact Mike Dees, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 888 First Street, N.E., Washington, D.C. 20426, or at (202) 219-2807.

Lois D. Cashell,

Secretary.

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Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals; Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy announces the proposed procedures for disbursement of \$275,000,000 (plus interest) in alleged overcharges remitted or to be remitted to the DOE by Occidental Petroleum Corporation and its wholly owned subsidiary OXY USA, Inc., Case No. VEF-0030. The OHA has tentatively determined that these funds should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986).

DATES AND ADDRESSES: Comments must be filed in duplicate by January 19, 1996, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0107. All comments should conspicuously display a reference to Case No. VEF-0030.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Janet N. Freimuth, Deputy Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585-0107, (202) 586-2390 [Wieker]; (202) 586-2400 [Freimuth].

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute a total of \$275,000,000 plus interest, remitted or to be remitted to the DOE by Occidental Petroleum Corporation. The DOE is currently holding \$100,000,000, plus accrued interest, of these funds in an interest bearing escrow account pending distribution. The DOE will receive additional annual payments of \$35,000,000 plus interest during the years 1996 through 2000.

The OHA proposes to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are

divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury.

Because the June 30, 1995 deadline for crude oil refund applications has passed, we will not accept any new applications from purchasers of refined petroleum products for these funds. As we state in the Proposed Decision, any party who has previously submitted a refund application in the crude oil refund proceeding should not file another Application for Refund. Any party whose crude oil application is approved will share in all crude oil overcharge funds.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in these proceedings will be available for public inspection between the hours of 1:00 p.m. to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585-0107.

Dated: December 1, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation Order

Name of Case: OXY USA, Inc.

Date of Filing: September 18, 1995

Case Number: VEF-0030

The Office of General Counsel, Regulatory Litigation (OGC), formerly the Economic Regulatory Administration (ERA), filed a Petition for Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The Petition concerns funds remitted to the DOE pursuant to a Consent Order executed by the DOE and Occidental Petroleum Corporation (Occidental), including its wholly-owned subsidiary, OXY USA, Inc. (OXY). OXY was formerly Cities Service Oil and Gas Corporation, which in turn was a successor in interest to Cities Service Corporation (Cities). Unless otherwise indicated, the firms collectively are referred to as Occidental.

Pursuant to the Consent Order, Occidental agreed to remit \$100 million within 30 days of the Consent Order and then to make five annual payments of \$35 million plus interest. On September 17, 1995, OXY remitted \$100 million to the DOE.

In accordance with procedural regulations codified at 10 C.F.R. Part 205, Subpart V (Subpart V), the OGC requests that the OHA establish special refund procedures to remedy the effects of the alleged regulatory violations which were resolved by the Consent Order. This Decision and Order sets forth the OHA's proposed procedures for distributing the consent order funds.

I. Background

The Consent Order at issue was executed on June 27, 1995 in proposed form. The DOE published notice of the Proposed Consent Order and the opportunity to file comments. See 60 FR 35186 (July 6, 1995). Following the comment period, the DOE issued the Proposed Consent Order as a final order, pursuant to 10 C.F.R. 205.199j. See 60 FR 43130 (August 18, 1995).

The Consent Order covers the period October 1, 1979 through January 27, 1981 and reflects the resolution of enforcement proceedings related to 91 reciprocal crude oil transactions engaged in by Cities during that period. In those transactions, Cities sold price-controlled crude oil in its refinery inventory in exchange for deeply discounted exempt crude oil.

In 1988, the DOE issued a Remedial Order (RO) holding that the transactions violated the price regulations and that the violation amount of \$264 million, plus interest, should be remitted to the DOE. *Cities Service Oil and Gas Corp.*, 17 DOE ¶ 83,021 (1988). The 1988 RO also remanded the issue of whether the transactions violated other regulations.

In 1992, the OGC issued a Revised Proposed Remedial Order (RPRO), specifying an alternate liability of \$254 million, plus interest, on the ground that 83 of the transactions violated the entitlements reporting requirements. OXY filed objections to the RPRO with the OHA. *OXY USA, Inc.*, Case No. LRO-0003 (dismissed August 30, 1995). The case was ready for oral argument at the time of the June 27, 1995 execution of the Proposed Consent Order.

During the pendency of the OHA proceeding on the RPRO, the Federal Energy Regulatory Commission (FERC) reversed the 1988 RO. *Cities Service Oil and Gas Corp.*, 65 FERC ¶ 61,403 (1993), *reconsideration denied*, 66 FERC ¶ 61,222 (1994). After FERC's denial of reconsideration motions filed by the DOE and intervenor parties, intervenor parties appealed to federal district court, which dismissed their appeals for lack of standing. *Alabama v. FERC*, 3 Fed. Energy Guidelines ¶ 26,693 (D.D.C. June 8, 1995). One of the intervenors had noticed an appeal at the time of the June 27, 1995 execution of the Proposed Consent Order. See 60 FR 35187 note 2.

Although the Consent Order resulted from the enforcement proceeding involving the 91 reciprocal crude oil transactions, the Consent Order is global. The Consent Order provides that it settles all pending and potential civil and administrative claims against Occidental

under the federal petroleum price and allocation regulations during the consent order period. Thus, the Consent Order settles not only issues related to the 91 reciprocal transactions but also any other potential liability of Occidental with respect to its compliance with the federal price and allocation regulations during the consent order period.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Petroleum Overcharge Distribution and Restitution Act of 1986*, 15 U.S.C. 4501 *et seq.*; see also *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

III. Proposed Refund Procedures

A. The DOE's Modified Statement of Restitutionary Policy

The distribution of crude oil overcharge funds is governed by the DOE's July 1986 Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP). See 51 Fed. Reg. 27899 (August 4, 1986). The MSRP was issued in conjunction with the Stripper Well Settlement Agreement. See *In re: The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986).

Under the MSRP, up to 20 percent of crude oil overcharge funds may be reserved for direct restitution to injured purchasers, with the remainder divided equally between the states and the federal government. The MSRP also specifies that any funds remaining after all valid claims by injured purchasers are paid be disbursed to the states and the federal government in equal amounts.

In August 1986, shortly after the issuance of the MSRP, the OHA issued an Order that announced that the MSRP would be applied in all Subpart V proceedings involving alleged crude oil violations. See *Order Implementing the MSRP*, 51 FR 29689 (August 20, 1986) (the August 1986 Order). In response, parties filed comments.

In April 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. See 52 FR 11737 (April 10, 1987). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil funds under the Subpart V regulations. A crude oil refund applicant was only required to submit one application for its share of crude oil overcharge funds.

Consistent with the foregoing, the OHA accepted refund applications from 1987 until the June 30, 1995 deadline. See 60 FR 19914 (April 20, 1995). Applicants who filed before the deadline and whose applications are approved will share in the crude oil overcharge funds. Approved applicants are currently receiving \$.0016 per gallon of purchased refined product.

B. Proposal To Distribute the OXY Consent Order Funds in Accordance With the MSRP

We have tentatively determined that all of the consent order funds are crude oil funds and, therefore, should be distributed in accordance with the MSRP. Although the Consent Order was global, i.e., it settled any potential claims against Occidental, the Consent Order was the result of a pending enforcement proceeding related to OXY's reciprocal purchases and sales of crude oil and the reporting of the purchased crude oil to the DOE Entitlements Program. The Consent Order does not identify any potential refined product claims, let alone indicate that any such potential violations were taken into account in arriving at the settlement amount. In fact, a provision in the Consent Order refers to an apportionment of the principal portion of consent order funds as payments of the principal and interest sought by the agency based on the ratio of principal and interest sought in the RPRO.¹ In addition to the Consent Order itself, the Notice of Proposed Consent Order and the Petition for Implementation of Special Refund Procedures both support the conclusion that the consent order funds are crude oil funds. The Notice of Proposed Consent Order indicates that the settlement amount was determined by reference to the litigation concerning the reciprocal crude oil transactions. See 60 FR at 35187 (Part II. Determination of Reasonable Settlement Amount). The Petition for Implementation of Special Refund Procedures states that the alleged violations underlying the Consent Order concern the improper reporting of crude oil certifications to the Entitlements Program, i.e., the claim in the RPRO. Petition at 2. Under the foregoing circumstances, we have tentatively determined that 100 percent of the consent order funds are crude oil funds.²

Because we have tentatively determined that 100 percent of the consent order funds are crude oil funds, we propose to distribute the funds according to the MSRP. We propose to reserve initially the full 20 percent (\$55 million), plus accrued interest, for direct restitution to injured purchasers of crude oil and refined petroleum products. We propose to distribute the remaining 80 percent (\$220 million) in equal shares to the states and the federal government.

¹ Section 406 provides in full:

Inasmuch as this Consent Order settles both the principal and interest portions of all claims made by the DOE against Occidental, the principal portion of the payments made pursuant to paragraphs 402 through 404 shall be deemed to be a payment of principal and interest in the same ratio that the principal portion of the DOE's claim in the proceeding styled *In the Matter of OXY USA Inc.*, Case No. LRO-0003, bears to the interest portion of the DOE's claim in that case as of the Effective Date.

60 FR at 35189.

² See generally *Mt. Airy Refining Co.*, 24 DOE ¶ 85,094 at 88,305 n.1 (1994) (consent order funds considered crude oil funds where most of consent order funds related to crude oil violations); *DeMenno-Kerdoon*, 23 DOE ¶ 85,046 at 88,112 n.1 (1993) (global consent order funds considered crude oil funds where the funds were less than the crude oil violations alleged in PRO that was settled by the consent order).

As indicated above, the funds reserved for direct restitution to injured purchasers will be available for distribution through OHA's Subpart V crude oil overcharge refund proceeding. We have previously discussed the application requirements and standards that apply in that proceeding. Because the deadline for the filing of applications has now passed, we do not believe that it is necessary to reiterate those matters. In accordance with the MSRP, we propose that any funds remaining after the conclusion of the Subpart V crude oil overcharge refund proceeding be disbursed to the states and the federal government in equal shares.

With respect to the funds made available to the states for indirect restitution, we note that the share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement. Based on the foregoing, we propose that the \$100 million initial payment made by Occidental be disbursed as follows: \$20 million, plus accrued interest, to the DOE interest-bearing escrow account for crude oil claimants, \$40 million, plus accrued interest, to the DOE interest-bearing escrow account for the states, and \$40 million, plus accrued interest, to the DOE interest-bearing escrow account for the federal government. We propose that, upon remittance to the DOE, Occidental's subsequent five annual payments of \$35 million, plus accrued interest, be distributed to the same accounts in the same proportions.

It is therefore ordered That:

The consent order funds remitted by Occidental Petroleum Corporation will be distributed in accordance with the foregoing Decision.

[FR Doc. 95-30960 Filed 12-19-95; 8:45 am]

BILLING CODE 6450-01-P

Western Area Power Administration

Loveland Area Projects, Post-1999 Resource Study

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Completion.

SUMMARY: In accordance with the Post-1989 General Power Marketing and Allocation Criteria (Criteria), Pick-Sloan Missouri Basin Program-Western Division, published in the Federal Register on January 31, 1986 (51 FR 4012), the Western Area Power Administration's (Western) Loveland Area Office (LAO) has completed a hydrological study to determine the available electric power resources for the period starting with the first day of the October 1999 billing period through the last day of the September 2004 billing period. The results of the study show that there is an energy deficit and